

REMARKS

Applicant has now had an opportunity to carefully consider the Office Action, and respectfully submits that the subject application is now in condition for allowance based upon the amendments presented herein and the following remarks.

Status of Claims

The subject application was originally filed with twenty-five (25) claims. In a Response to Restriction Requirement, Applicant provisionally elected with traverse to prosecute the invention of claims 1-19. Accordingly, claims 20-25 have been withdrawn from further prosecution. In this Amendment, Applicant has amended claims 1, 9, 14, 18, and 19, and cancelled claim 17 without prejudice. Upon entry of this Amendment, claims 1-16 and 18-19 will be pending in the subject application.

Summary of Office Action

In the Office Action dated August 2, 2007, the Examiner:

1. withdrew claims 20-25 from further consideration as being drawn to a non-elected group;
2. rejected claims 1-8 and 17 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;
3. rejected claim 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,846,583 issued to Gentner (“Gentner”);
4. rejected claims 1-19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,993,876 issued to Bertocchi (“Bertocchi”); and
5. rejected claims 1-19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,511,695 issued to Paquin (“Paquin”).

Rejection to Claims 1-8 and 17 Under 35 U.S.C. § 112, Second Paragraph

Applicant has amended independent claim 1 to delete the second instance of “fluid product.” Accordingly, the 35 U.S.C. § 112, second paragraph, rejection to independent claim 1, and the claims that depend therefrom (i.e., claims 2-8), should be withdrawn.

Applicant has cancelled claim 17 rendering the 35 U.S.C. § 112, second paragraph, rejection to claim 17 moot. Accordingly, this rejection should be withdrawn.

Rejection to Claim 19 Under 35 U.S.C. § 102(b) Based on Gentner

As discussed above, claim 19 is rejected under 35 U.S.C. § 102(b) as being anticipated by Gentner. For at least the following reason, Applicant traverses this rejection.

Gentner fails to disclose or suggest a method for heat treating a homogenized fluid product including the step of “introducing at least two streams of homogenized fluid product into a passageway for impingement mixing thereof” as required by independent claim 19. Indeed, Gentner is silent with respect to the mixing of two streams of homogenized fluid product, let alone the specific type of mixing required by the claimed invention (i.e., impingement mixing).

For at least the foregoing reason, the 35 U.S.C. § 102(b) rejection to independent claim 19 is unsupported by Gentner and should be withdrawn.

Rejection to Claims 1-19 Under 35 U.S.C. § 102(b) Based on Bertocchi

As discussed above, claims 1-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bertocchi. For at least the following reasons, Applicant traverses this rejection.

Claims 1-16

Bertocchi fails to disclose or suggest the step of “feeding at least one stream of fluid product ingredients through a local constriction of flow to effectuate high shear mixing of the fluid product ingredients in a high shear mixing zone downstream from the local constriction of flow and thereby form a heated homogenized fluid product” as required by independent claims 1, 9, and 14. Instead, Bertocchi states that “[t]he strainer directly discharges the puree into a volumetric pump 5 supplying a recirculation circuit 6 which contains a circulation pump 7 of the lobe type which exerts a very delicate pumping action on the processed product and is intended to convey the puree into a heat exchanger 8 ... in which the puree in recirculation circuit 6 is subject to a rapid heating action ... up to a temperature of about 80-100°C, sufficient to obtain enzymatic inactivation.” (see col. 3, lines 36-45). Indeed, it is the heat exchanger 8 in Bertocchi that heats the fluid product, not the so-called “mixing” device 9.

For at least the foregoing reason, the 35 U.S.C. § 102(b) rejection to independent claims 1-16 is unsupported by Bertocchi and should be withdrawn.

Claims 18-19

Bertocchi fails to disclose or suggest the step of “introducing at least two streams of fluid components into a passageway for impingement mixing thereof to effectuate high shear mixing of the homogenized fluid product” as required by independent claims 18 and 19. Instead, the so-called “mixing” device 9 in Bertocchi includes a duct 10 having a tube portion that is closed at its end and provided with a plurality of holes 11 on its side surface (see col. 3, lines 58-61). Indeed, the device 9 is not configured to permit impingement mixing of at least two fluid streams as required by the claimed invention.

For at least the foregoing reasons, the 35 U.S.C. § 102(b) rejection to independent claims 18 and 19 is unsupported by Bertocchi and should be withdrawn.

Rejection to Claims 1-19 Under 35 U.S.C. § 102(b) Based on Paquin

As discussed above, claims 1-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Paquin. For at least the following reason, Applicant traverses this rejection.

Paquin fails to disclose or suggest the mixing of a stream of a cooled fluid product with a stream of a heated fluid product to heat treat the heated fluid product, as required, in one form or another, by independent claims 1, 9, 14, 18, and 19. Instead, Paquin states that “[a]fter the pressure treatment, when the product exits the high pressure zone of the equipment, the solution is cooled down with refrigerated water in order to bring the temperature of the sample back to about 20°C to 25°C.” (see col. 4, lines 46-49). Indeed, Paquin fails to disclose the use of a homogenized cooled fluid product for cooling freshly homogenized fluid product.

For at least the foregoing reason, the 35 U.S.C. § 102(b) rejection to independent claims 1-19 is unsupported by Paquin and should be withdrawn.

Conclusion

In view of the remarks above and the amendments presented herein, it is believed that claims 1-16 and 18-19 are in condition for allowance and notice to such effect is respectfully requested. If the Examiner thinks a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at the phone number provided below.

If any additional fees are due in connection with this Amendment, the Commissioner is authorized to charge Deposit Account No. 02-2051, specifically identifying Docket No. 24961-80.

Respectfully submitted,

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By: /Gregory S. Kocolouris/
Gregory S. Kocolouris
Reg. No. 47,714

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
2300 BP Tower
200 Public Square
Cleveland, OH 44114-2378
(216) 363-4453